

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LEO MERAZ,

No. C 08-4540 MHP (pr)

Plaintiff,

**ORDER OF SERVICE**

v.

Lt. STEVEN REPPOND; et al.,

Defendants.

**INTRODUCTION**

Leo Meraz, an inmate at the California State Prison - Sacramento, filed a pro se civil rights complaint under 42 U.S.C. § 1983 concerning conditions he experienced while incarcerated at Pelican Bay State Prison. After he filed his complaint, he filed an amended complaint, and that is now before the court for review pursuant to 28 U.S.C. § 1915A.

**BACKGROUND**

Meraz alleges the following about an incident that occurred on December 5, 2007: On that day, Meraz was going to a chapel service and realized that unclothed body inspections were going to be done. He didn't want to be searched, so he tried to return to the housing unit. When he arrived at the housing unit, he was handcuffed and put in a holding cage. He was then taken to the sergeant's office. Correctional lieutenant Reppond shook him forcefully, slammed his face into a concrete wall four times, and slammed him onto the ground. Correctional officer ("C/O") Allen Risenhoover, C/O C. W. Speaker, C/O James Thom, and correctional sergeant A. Navarro "stood by un-responsive observing" as Reppond used force on Meraz. Amended Complaint, pp. 5, 6.

Meraz also alleges that Reppond fabricated a rule violation report accusing him of assaulting staff, and that Risenhoover and Navarro gave false reports about the incident. He also contends that nurse Carson made a medical report of injury that she "fabricated" by "not noting injuries and mollifying other injuries." Amended Complaint, p. 7.

Meraz further alleges that -- after he left the area to avoid the unclothed body search, after Reppond used force on him, and after he was searched and no contraband was found on him -- lieutenant Reppond reported that he suspected Meraz had secreted contraband in his rectum based on the blood on Meraz's boxer shorts. As a result, Meraz was placed on contraband watch for three days. On contraband watch, Meraz was kept in a small holding cell wearing only boxer shorts, was observed at all times, and had his excrement inspected for contraband. After three days passed and no contraband was excreted, Meraz was released from contraband watch.

### DISCUSSION

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. §1915A(a). The court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §1915A(b)(1),(2).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated and (2) that the violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

When prison officials stand accused of using excessive force in violation of the Eighth Amendment, the core judicial inquiry is whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. See Hudson v. McMillian, 503 U.S. 1, 6-7 (1992); Whitley v. Albers, 475 U.S. 312, 320-21 (1986). Liberally construed, the amended complaint states a § 1983 claim against defendants

1 Reppond, Risenhoover, Speaker, Thom, and Navarro for the alleged use of excessive force  
2 on Meraz on December 5, 2007. Although only Reppond is alleged to have actually hit  
3 Meraz, the allegations that the others stood by, observing but failing to intervene, liberally  
4 construed, are sufficient to state a claim for relief against them as well as the individual who  
5 allegedly inflicted the blows. See Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995)  
6 (prison official's failure to intervene to prevent 8th Amendment violation may be basis for  
7 liability).

8 The allegations in the amended complaint that Reppond prepared a false rule violation  
9 report, and that Risenhoover and Navarro prepared false incident reports don't state a claim.  
10 A prisoner has no constitutionally guaranteed immunity from being falsely or wrongly  
11 accused of conduct which may result in the deprivation of a protected liberty interest.  
12 Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989); Freeman v. Rideout, 808 F.2d 949,  
13 951 (2d Cir. 1986). As long as a prisoner is afforded procedural due process in the  
14 disciplinary hearing, allegations of a fabricated charge fail to state a claim under § 1983,  
15 Hanrahan v. Lane, 747 F.2d 1137, 1140-41 (7th Cir. 1984). Meraz has not alleged that he  
16 was disciplined or that he was denied procedural due process in connection with such  
17 discipline. He also has not stated a claim against the nurse who allegedly downplayed the  
18 nature of his injuries when she made her report. He does not allege that the nurse failed to  
19 treat him, but only that she did not document things properly. The claims that various  
20 defendants prepared false reports are dismissed.

21 The placement of a prisoner in some sort of administrative segregation may violate  
22 due process only if the liberty at issue is one of real substance, which generally is limited to  
23 freedom from restraint that imposes "atypical and significant hardship on the inmate in  
24 relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995).  
25 Meraz's 72-hour placement in the contraband watch cell did not amount to atypical and  
26 significant hardship within the correctional system. Although the conditions in the  
27 contraband watch cell were more onerous than those plaintiff normally faced in prison, his  
28 placement was simply too brief to implicate the Due Process Clause. Compare

1 id. (placement in disciplinary segregation for 30 days did not constitute atypical and  
2 significant hardship within the correctional context), and Mujahid v. Meyer, 59 F.3d 931,  
3 932 (9th Cir. 1995) (placement in disciplinary segregation for 14 days did not constitute  
4 atypical and significant hardship within the correctional context), with Wilkinson v. Austin,  
5 545 U.S. 209, 223-25 (2005) (indefinite placement in “supermax” facility, where inmates are  
6 not eligible for parole consideration, imposes an atypical and significant hardship within the  
7 correctional context). And even if the liberty at issue was one of real substance, plaintiff  
8 received all the process he was due – he was informed that he was being placed in the  
9 contraband watch cell because he was suspected of having secreted contraband in his body  
10 and he was held for no more than 72 hours before being released or afforded a non-  
11 adversarial hearing. See Toussaint v. McCarthy, 801 F.2d 1080, 1100 & n20 (9th Cir. 1986).

12 The placement on contraband watch also did not amount to an Eighth Amendment  
13 violation. A prison official violates the Eighth Amendment only if two requirements are met:  
14 (1) the deprivation alleged must be, objectively, sufficiently serious, and (2) the prison  
15 official possesses a sufficiently culpable state of mind. Farmer v. Brennan, 511 U.S. 825,  
16 834 (1994). Here, the conditions that lasted only 72 hours were not sufficiently serious  
17 enough and there is no allegation that prison officials acted with deliberate indifference to  
18 his health or maliciously and sadistically to cause plaintiff harm. See LeMaire v. Maass, 12  
19 F.3d 1444, 1452-54 (9th Cir. 1993) (“malicious and sadistic” standard applies where prisoner  
20 challenges not so much conditions of confinement or indifference to medical needs that do  
21 not clash with important governmental responsibilities, but rather levels his complaint at  
22 measured practices and sanctions used in exigent circumstances or imposed with  
23 considerable due process to maintain control over difficult prisoners ). Meraz was placed in  
24 the contraband watch cell after Reppond reported suspecting him of having secreted  
25 contraband in his body – which occurred after Meraz reversed course upon seeing he was  
26 going to be subjected to an unclothed body search and had blood on his undershorts. Under  
27 the circumstances, he was subjected to conditions designed to reveal whether he had  
28 concealed a weapon or contraband in his body. The conditions may have been onerous, but

1 prison officials did not impose them maliciously and sadistically to cause plaintiff harm.  
2 Plaintiff was released from the watch cell as soon as prison officials were satisfied that he  
3 had not hidden contraband in his body.

#### 4 CONCLUSION

5 For the foregoing reasons,

6 1. Plaintiff has stated a cognizable § 1983 excessive force claim against  
7 defendants Reppond, Risenhoover, Speaker, Thom, and Navarro. All other defendants and  
8 claims are dismissed.

9 2. The clerk shall issue a summons and the United States Marshal shall serve,  
10 without prepayment of fees, a copy of the amended complaint and this order upon the  
11 following individuals, all of whom apparently are employed at Pelican Bay State Prison:

- 12 - correctional lieutenant Steven Reppond
- 13 - correctional sergeant A. Navarro
- 14 - correctional officer Allen Risenhoover
- 15 - correctional officer James Thom
- 16 - correctional officer C. W. Speaker

17 3. In order to expedite the resolution of this case, the following briefing schedule  
18 for dispositive motions is set:

19 a. No later than **June 19, 2009**, defendants must file and serve a motion for  
20 summary judgment or other dispositive motion. If defendants are of the opinion that this  
21 case cannot be resolved by summary judgment, they must so inform the court prior to the  
22 date the motion is due.

23 b. Plaintiff's opposition to the summary judgment or other dispositive  
24 motion must be filed with the court and served upon defendants no later than **July 24, 2009**.  
25 Plaintiff must bear in mind the following notice and warning regarding summary judgment as  
26 he prepares his opposition to any summary judgment motion:

27 The defendants may make a motion for summary judgment by which  
28 they seek to have your case dismissed. A motion for summary judgment under  
Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for  
summary judgment. Generally, summary judgment must be granted when  
there is no genuine issue of material fact -- that is, if there is no real dispute

1 about any fact that would affect the result of your case, the party who asked for  
2 summary judgment is entitled to judgment as a matter of law, which will end  
3 your case. When a party you are suing makes a motion for summary judgment  
4 that is properly supported by declarations (or other sworn testimony), you  
5 cannot simply rely on what your complaint says. Instead, you must set out  
6 specific facts in declarations, depositions, answers to interrogatories, or  
7 authenticated documents, as provided in Rule 56(e), that contradict the facts  
8 shown in the defendants' declarations and documents and show that there is a  
9 genuine issue of material fact for trial. If you do not submit your own evidence  
10 in opposition, summary judgment, if appropriate, may be entered against you.  
11 If summary judgment is granted, your case will be dismissed and there will be  
12 no trial. (See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998).

13 c. If defendants wish to file a reply brief, they must file and serve the reply  
14 brief no later than **August 14, 2009**.


15 4. All communications by plaintiff with the court must be served on a defendant's  
16 counsel by mailing a true copy of the document to defendant's counsel. The court may  
17 disregard any document which a party files but fails to send a copy of to his opponent. Until  
18 a defendant's counsel has been designated, plaintiff may mail a true copy of the document  
19 directly to defendant, but once a defendant is represented by counsel, all documents must be  
20 mailed to counsel rather than directly to that defendant.

21 5. Discovery may be taken in accordance with the Federal Rules of Civil  
22 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local  
23 Rule 16-1 is required before the parties may conduct discovery.

24 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep  
25 the court informed of any change of address and must comply with the court's orders in a  
26 timely fashion. Failure to do so may result in the dismissal of this action for failure to  
27 prosecute pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff is cautioned that he  
28 must include the case name and case number for this case on any document he submits to this  
court for consideration in this case.

IT IS SO ORDERED.

Dated: March 17, 2009

  
Marilyn Hall Patel  
United States District Judge